

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MEYER & MEYER, INC.,)
OPTION ONE MORTGAGE CORP.)
Defendants Below/Appellants)
)
v.)
)
JACQUELINE BROOKS,)
Plaintiff Below/Appellee)

C.A. No: 2007-11-268

John R. Weaver, Esquire
813 N. Tatnall St., Suite 200
Wilmington, Delaware 198001
Attorney for Defendants
Below/Appellants

Jacqueline Brooks
813 Kirkwood St.
Wilmington, Delaware 19801
Plaintiff Below/Appellee, Pro Se

Date Submitted: May 5, 2009
Date Decided: May 19, 2009

MEMORANDUM OPINION

Trial in the above-captioned matter took place on May 5, 2009. Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's Final Decision and Order.

I. The Facts

Following trial and receipt of all documentary and oral evidence,¹ the Court finds the relevant facts as follows:

¹ At trial the following exhibits were either stipulated or moved into evidence: Plaintiff's Exhibit No. 1 was a copy of a home inspection listing defects in the house, with accompanying photographs. Plaintiff's Exhibit No. 2 seems to be a page from a document that the parties executed during settlement. Defendant's Exhibit No. 1 was a copy of an Agreement of Sale executed by Brooks and Meyer & Meyer. Defendant's Exhibit No. 2 was a series of four photographs showing the exterior of the house and backyard.

I. The Facts (cont'd)

On October 12, 2005, Plaintiff Below/Appellee Jacqueline Brooks ("Brooks") entered into an agreement of sale with Defendant Below/Appellant Meyer & Meyer, Inc., to purchase a house located at 813 Kirkwood St. in Wilmington, Delaware.² That house was part of Kirkwood Manor II, a development which Meyer & Meyer renovated and developed in conjunction with the Wilmington Housing Partnership. Some of the homes involved in the project were newly constructed, including the house adjacent to Brooks' house, at 811 Kirkwood St. ("the 811 house"). Other houses in the development, including Brooks' house, were completely renovated, with only the existing basement foundations and brick firewalls kept. The other house adjacent to Brooks' home, located at 815 Kirkwood St., ("the 815 house") was an existing house that was not part of the project.

Before settlement, Brooks noticed damp and/or leaky areas under the house, both in the crawl space and basement. When she notified Meyer & Meyer of the conditions, Peter Meyer, a partner of the company, told her that the presence of the water was due to the unfinished construction on the 811 house, and that once that construction was finished, the crawl space and basement would thereafter become dry.

Peter Meyer admitted at trial that he made the above statement regarding the basement and crawl space leakage. He also testified that he inspected the basement and crawlspace after the 811 house construction was completed and found that there was no water leakage or dampness. However, Brooks testified that after the 811 house was completed, the basement and crawl space were still damp and that she contacted Meyer &

² Brooks identified herself at trial as Jacqueline Juanita Darby

I. The Facts (cont'd)

Meyer to inquire as to whether they would still repair the problems. She further stated that Meyer told her that she would need to fix it herself.

When called as a witness at trial by Brooks, Peter Meyer and Justin Meyer (another partner of the company) testified at trial that any water leakage into the basement and crawl space that occurred after the 811 house was completed was most likely due to Brooks' self-installation of green plastic carpeting in the backyard, as well as rainwater runoff from the 815 house.³ Regarding the carpeting, Meyer stated that when the house was renovated, the backyard was graded to allow rainwater to run away from the house. In addition, grass was planted in the backyard to absorb water. Meyer testified at trial that when the rug was installed, it leveled the grade of Brooks' lawn and created an impervious layer over the grass, effectively impeding absorption and funneling rainwater into the basement and crawlspace. He also testified that a contributing factor to the leakage was the 815 house, which had a downspout that funneled rainwater to Brooks' house.

Brooks testified that after she moved into the house, she discovered water leaking from the third floor roof of the house into her bedroom, and contacted Meyer & Meyer about the problem. Peter Meyer testified that the roof leakage was most likely due to Brooks installing a satellite dish on the roof, which he saw upon inspecting the area.⁴ Brooks denied ever having a satellite dish on the roof, and contends that the dish was always attached to the side of the house, as shown in one of the photographs admitted

³ A photograph of the backyard, with the carpeting installed, was presented into evidence as part of Defendant's Exhibit No. 2.

⁴ Peter Meyer explained that because the roof was flat, water was able to leak into the holes made by screws with which the satellite dish was fastened to the roof.

into evidence as Defendant's Exhibit No. 2. Meyer & Meyer submitted that Brooks moved the dish at some point from the roof to the side of the house.

At some point after Meyer & Meyer heard from Brooks about the leakage from the third floor roof, they sent Justin Meyer and another employee to make repairs to the house. Brooks testified that they put tar on the roof and against the back wall of the house. Justin Meyer testified that he put roof cement on the second floor roof, but did not go onto the third floor roof, where Brooks allegedly installed the satellite dish.

Procedural History:

Brooks originally filed a complaint in Justice of the Peace Court No. 13, naming Option One Mortgage Corporation ("Option One") and Meyer & Meyer, Inc., as defendants. On November 8, 2007, the JP Court issued an opinion finding in favor of Brooks and against Meyer & Meyer for \$8,683 plus court costs and post-judgment interest. The Court also found that Brooks did not have any lawful claim against Option One, therefore dismissing that portion of plaintiff's claim with prejudice.

On November 19, 2007, Meyer & Meyer filed an incomplete Notice of Appeal with this Court. The Civil Clerk's office notified Meyer & Meyer that it had neglected to include an entry of appearance, and allowed ten days to correct the error. On November 29, 2007, Meyer & Meyer correctly filed the entry of appearance. Brooks was served with the summons and notice of appeal on January 11, 2008 and filed the complaint on appeal on January 16, 2008. The caption on the complaint did not include Option One as a defendant, only naming Meyer & Meyer as a defendant. On February 4, 2008, Meyer & Meyer filed an answer to the complaint, including as an affirmative defense that this Court lacks subject matter jurisdiction due to Brooks' failure to comply with the mirror

image rule. On December 18, 2008, the date on which this matter was scheduled for trial, the Court determined that Brooks had not followed the mirror image rule. The Court permitted counsel for Meyer & Meyer to provide legal authority that would permit this case to proceed.

On February 6, 2009, after review of the submissions from Meyer & Meyer, Judge Joseph Flickinger issued a Memorandum Opinion finding that this Court retained subject matter jurisdiction despite the defect in the complaint. The Order allowed Brooks thirty (30) calendar days in which to file a proper, amended complaint naming both defendants below in the caption. On February 12, 2009, Brooks filed a proper, amended complaint, which named both Meyer & Meyer and Option One in the caption and concurrently moved to dismiss Option One as a defendant at the close of defendants' case-in-chief. The Court granted Brooks' *pro-se* Motion to Dismiss Option One Mortgage Corp. as a party defendant without opposition by Mr. Weaver.. The matter proceeded to trial on May 5, 2009.

II. The Law

The plaintiff in a civil suit is required to prove all the elements of his or her claim by a preponderance of the evidence.⁵ "Preponderance of the evidence" is defined "the weight of evidence under all the facts and circumstances proved before you."⁶ Or, put somewhat differently, "[t]he side on which the preponderance of the evidence exists is the side on which the greater weight of the evidence is found."⁷

To recover on a claim for breach of contract, Plaintiff must establish three elements by a preponderance of the evidence: (1) the existence of a contract, whether

⁵ *Neilson Business Equipment Center, Inc. v. Monteleone*, Del.Supr., 524 A.2d 1172 (1987).

⁶ *Warwick v. Addicks*, Del.Super., 157 A. 205, 206 (1931)

⁷ *Reynolds v. Reynolds*, Del.Supr., 237 A.2d 708 (1967).

express or implied; (2) the breach of an obligation imposed by the contract; and (3) resultant damages to the plaintiff.⁸

Damages for breach of contract will be in an amount sufficient to return the party damaged to the position that the party would have been in had the breach not occurred.⁹ Plaintiff, however, has a responsibility of proving damages as an essential element of his claim by a preponderance of the evidence. Damages cannot be speculative. The Plaintiff “must prove his damages with a reasonable degree of precision.”¹⁰ “Reasonable estimates are permissible even if they lack mathematical certainty if the Court is given a reasonable basis to make a responsible estimate of damages.”¹¹

III. Opinion and Order

The Court finds that even if it were to conclude that a valid contract existed between the parties and that Meyer & Meyer breached the contract, Brooks has not proven at trial her alleged damages by a preponderance of the evidence.

Brooks seeks \$30,000 in damages, as reflected in her complaint and her testimony at trial. However, she presented no testimony regarding how this figure was calculated. While Brooks attached to her complaint three (3) repair estimates for the basement, crawl space, and roof, these estimates were not marked as exhibits; nor introduced into evidence and no testimony was presented by Brooks regarding the estimates. Therefore, the Court cannot consider the repair estimates when determining the issue damages as part of the trial record. Brooks also did not call any fact witnesses to prove damages, other than co-defendant who did not assist her in proving that essential element of breach

⁸ *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del.2003).

⁹ *Delaware Limousine Service, Inc. v. Royal Limousine Svc., Inc.*, 1991 LEXIS 130, at *8 (Del.Super.)

¹⁰ *Kronenberg v. Katz*, 872 A.2d 568, 609 (Del.Ch. 2004), quoting *Laskowski v. Wallis*, 205 A.2d 825 (Del. 1964)

¹¹ *CIT Technology Financing Services v. Owen Printing Dover, Inc.*, 2008 WL 2586683 (Del. Super.)

of contract claim. As the record is otherwise devoid of evidence regarding the alleged damages, the Court is unable to find that Brooks can recover on her claim for breach of contract and specifically the element of damages by a preponderance of the evidence.

For the foregoing reasons, Judgment is hereby entered in favor of the Defendant Below/Appellant Meyer & Meyer, Inc. Each party must bear their own costs.

T IS SO ORDERED this 19th day of May, 2009.

John K. Welch, Judge

/jb

cc: Ms. LuAnn Smith, CCP Civil Case Processor